



Michael Jones

## Fight or Flight? Non-Compete Agreements in Physician Labor Markets

On February 12, 2018, a judge in Hamilton County, Ohio ordered Dr. Mario Zuccarello to cease practicing medicine in the greater Cincinnati region. Zuccarello, who had been hired by the University of Cincinnati (UC) in 1990, was unintentionally tangled up in a situation involving two medical institutions. Before the situation evolved, he was chair of the UC Neurosurgery Department and vice chairman of the Mayfield Clinic's board of directors. The temporary restraining order was one of the final chapters of a longstanding relationship between the two institutions.

In 1989, the Mayfield Clinic, a private-practice group of neurosurgeons, had entered into an affiliation agreement with UC to staff and manage its Department of Neurosurgery. Four years later Zuccarello joined Mayfield Clinic, and UC appointed him as the department chair in 2010. In February 2017, as UC was beginning construction on its new UC Gardner Neuroscience Institute, it terminated its affiliation agreement with the Mayfield Clinic. In the press, both organizations indicated that the split was amicable and reflected UC's intention that all employees of the new institute would be hired through the university.<sup>1</sup> Under a separate master services agreement, Mayfield Clinic continued to provide services to UC until June 30, 2017.

Zuccarello planned to continue training residents after that date, but Mayfield Clinic issued a directive prohibiting its physicians from working with UC's medical residents.<sup>2</sup> The two parties were unable to resolve this and other matters, and Mayfield Clinic ended its employment relationship with Zuccarello on December 12, 2017. In 2001, as part of the Mayfield Clinic's employment agreement, Zuccarello agreed to a non-compete clause (see **Exhibit 1**) that prohibited him from practicing medicine within 25 miles of any Mayfield Clinic office (see **Exhibit 2**) for a period of two years after the end of his employment with the clinic. The specified area included UC's location.

At the time of his termination, Zuccarello was still employed by UC. After the temporary restraining order was issued, his options included: disputing the enforceability of the non-compete agreement in court, attempting to settle with Mayfield Clinic outside of court, or accepting the non-compete agreement. While Zuccarello faced this immediate dilemma, he also pondered the longer-term question of how he should

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